

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition Nos.: 71-026-08-1-5-01302
71-026-09-1-5-01857
Petitioner: 646 Diamond Land Trust
Respondent: St. Joseph County Assessor
Parcel No.: 71-08-02-312-003.000-026¹
Assessment Years: 2008 and 2009

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. Steven Kollar, trustee, on behalf of 646 Diamond Land Trust (“Petitioner”) initiated the 2008 assessment appeal by filing a Petition for Review of Assessment (Form 130) to the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) on December 30, 2009. The Petitioner initiated the 2009 assessment appeal by filing a Form 130 on May 20, 2010.
2. On April 18, 2011, the PTABOA mailed its Notification of Final Assessment (Form 115) for both appeals denying the appeal for both lack of standing and the Petitioner’s failure to provide probative evidence of the property value.
3. The Petitioner timely appealed the 2008 and 2009 assessments to the Board by filing Petitions for Review of Assessment (Form 131).² The Petitioner elected to have both appeals heard according to the small claims procedures.
4. The Board issued notices of hearing for both appeals dated May 24, 2013. On July 25, 2013, the Board held a consolidated hearing on both petitions through Administrative Law Judge Patti Kindler (“ALJ”). Neither the Board nor the ALJ inspected the property.
5. Frank Agostino appeared as counsel for the St. Joseph County Assessor. Project Manager Shana Penn and Assessor Rosemary Mandrici were sworn in as witnesses.

¹ On its Form 131 petitions, the Petitioner listed 018-1038-1665, which is apparently the key number.

² The 2009 Form 131 was filed on July 7, 2011, which appears to be untimely on its face. However, there was a defect with the 2008 appeal which impacted the 2009 appeal. Thus, the 2009 appeal to the Board is timely. *See* Board’s Exhibit A for assessment year 2009.

Facts

6. The subject property is a residential home located at 646 Diamond in South Bend, Indiana. For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3. For March 1, 2009 assessments, the valuation date was January 1, 2008. *Id.*
7. The PTABOA determined the following for both 2008 and 2009:

Land: \$1,100	Improvements: \$23,900	Total: \$25,000
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8. On the Form 131 petitions, the Petitioner requested the following assessments for both years:

Land: \$255.20	Improvements: \$5,544.80	Total: \$5,800
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Record

9. The official record for this matter is made up of the following:
 - a) The 2008 and 2009 Form 131 petitions with attachments,
 - b) A digital recording of the hearing,
 - c) Exhibits:

Petitioner Exhibit 1: Report entitled *Properties and Civil Penalties*

Board Exhibit A: Form 131 petitions for 2008 and 2009

Board Exhibit B: Hearing notices

Board Exhibit C: Hearing sign-in sheet

Respondent: No exhibits offered.
 - d) These Findings and Conclusions.

Summary of Parties' Contentions

10. Petitioner's case:
 - a) The assessment is excessive for both years in question. *Penn argument.* The property is currently a vacant lot. The City of South Bend demolished the house. *Penn testimony.* Ms. Penn offered a report entitled *Properties and Civil Penalties*, but she did not explain what it purports to show. *See Pet'r Ex. 1.*

b) Ms. Penn has only been employed by the Petitioner for two months. She does not know the condition the property in 2007 and 2008. She does not know the value of the property as of the assessment dates. *Penn testimony*.

11. Respondent's case:

a) Even if Ms. Penn has standing to testify, the Petitioner offered no evidence of condition or value as of the assessment dates in question. *Agostino argument*.

b) Because the Petitioner failed to raise a *prima facie* case, the Respondent has no duty to offer evidence to defend the current assessment. *Id.*

Objection

12. The Respondent objected to Ms. Penn's testimony, arguing that she offered no evidence that she was authorized to appear on the Petitioner's behalf. Specifically, she provided nothing to show that she is the owner or has any legal interest in the property, nor did she provide any evidence that she has any connection to the owner. She is not a tax representative certified by the Department of Local Government Finance. *Agostino argument*.

13. Ms. Penn stated that she is employed by the Petitioner as a project manager. The Respondent offered nothing to dispute her statement, and the Board finds no reason to doubt it. According to the Board's procedural rules, a permanent full-time employee of the property owner may be an "authorized representative" before the Board. *See* 52 IAC 2-2-4(1). Ms. Penn, therefore, is properly before the Board. The Respondent's objection is overruled.

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official's determination must make a *prima facie* case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs.*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is taxpayer's duty to walk the Indiana Board ... through every element of the analysis"). If the taxpayer makes a *prima facie* case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Analysis

15. The Petitioner did not make a *prima facie* case for reducing the subject property's assessment. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2. A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice ("USPAP") often will be probative. *See id.*; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
 - b) In any case, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c) Here, the Petitioner offered no probative evidence. While Ms. Penn testified as to the property's current status, she admittedly knew nothing about its condition or value as of the assessment dates in question. In fact, Ms. Penn stated she had no case. The only information about the property she was able to provide at the hearing was that the house was demolished by the City of South Bend and is a vacant lot. Ms. Penn did not indicate when the house was demolished. She had no knowledge of the value of the property on the assessment dates. The Petitioner failed to offer any evidence of the value on the relevant valuation dates and thus failed to make a *prima facie* case that the assessments are wrong. Consequently, the Respondent's duty to support the assessment with substantial evidence was not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to make a *prima facie* case for a reduction in the 2008 and 2009 assessments. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review sustains the 2008 and 2009 assessments.

ISSUED: October 8, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.